IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.16859 of 2008
and
M.P.Nos.1 and 2 of 2008

A.Alaguvel .. Petitioner

Vs.

1. The Deputy Director of Medicine,
   Rural Welfare Services and Family
   Welfare,
   Office of the District Family Planning,
   Perambalur District,
   Perambalur - 621 212.

2. The Medical Officer,
   Government - Primary Health
   Centre,
   Labbaikudikkadu - 621 108
   Perambalur District.

3. T.Mohanraj .. Respondents

(R3 impleaded vide order dated
18.11.2010 in M.P.No.1 of 2010
in W.P.No.16859 of 2008)

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent dated 02.06.2008 made in Rc.No.085/Ku.Na/2008 and quash the same and direct the first respondent to reinstate the petitioner into service with continuity of service and backwages and all other attendant benefits.

For Petitioner .. Mr.R.Balasubramanian
For Respondents .. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader for R1 & R2
Mr.M.Nallusamy for R3

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ORDER

Challenging the order of the first respondent dated 02.06.2008 and for a consequential direction to the first respondent to reinstate the petitioner into service with continuity of service and backwages and all other attendant benefits, the present writ petition has been filed.

2.The case of the petitioner is that he was called for an interview on 28.05.2008 and 29.05.2008 for appointment to the post of Driver under the control of the second respondent. After the interview, the petitioner was admittedly selected and granted appointment as Driver on 30.05.2008. He had also joined duty on the basis of the appointment letter dated 30.05.2008.

3.While matter stood thus, the first respondent seems to have called the petitioner and passed the impugned order on 02.06.2008 cancelling the appointment granted to the petitioner on the ground that the original educational certificate was not produced by him. It is the admitted case that before issuing this order, that too, within a matter of three days, no notice was served on the petitioner directing him to submit the required certificate. The case of the petitioner is that at the time of interview and at the time of selection, all the certificates which are required to be submitted were submitted and there was no requirement for any further production of any certificate. In any event, the order of cancellation has to be preceded by a show cause notice in compliance with the established principles of natural justice. In the instant case, admittedly, no prior notice was issued to the petitioner before the impugned order came to be issued by the first respondent.

4. Mr.R.Balasubramanian, learned counsel for the petitioner would submit that while admitting the writ petition, an interim order was passed by this Court. However the same was not complied with and the petitioner was not reinstated into service. In the said circumstances, the petitioner herein was constrained to file a contempt petition in Contempt Petition No.148 of 2009 and the same is pending consideration. Inspite of the contempt petition being filed and which was not taken up for disposal, the petitioner continued to remain out of employment without being reinstated despite the interim order passed by this Court.

5. Upon notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader entered appearance and filed counter affidavit. In the counter, the same reason is reiterated that the petitioner failed to produce the original certificate of

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SSLC mark sheet but subject to production, he was permitted to join duty on 30.05.2008.

6. What needs to be considered in the present writ petition is whether within a matter of few days, i.e. between 29.05.2009 and 02.06.2009, such a drastic action is required to be taken by the first respondent while passing adverse orders against the petitioner. In any event, the administration ought to have put the petitioner on notice directing him to submit whatever certificate required from the petitioner within a reasonable time. In the instant case, the action taken by the first respondent within three days of the petitioner's appointment is per se arbitrary and unjust and the same is without any justification at all.

7. In the light of the above narrative and the discussion, this Court has no hesitation in setting aside the impugned order of the first respondent dated 02.06.2008. While setting aside the order, respondents 1 and 2 are directed to reinstate the petitioner as Driver on the basis of his selection and original appointment dated 29.05.2008 with continuity of service and all other attendant benefits. However, the petitioner is not entitled to backwages for the period in question on the ground of "No work No pay". The said direction shall be complied with by respondents 1 and 2 within a period of one month from the date of receipt of a copy of this order.

8.The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Deputy Director of Medicine,
   Rural Welfare Services and Family
   Welfare,
   Office of the District Family Planning,
   Perambalur District,
   Perambalur - 621 212.

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2. The Medical Officer,
   Government - Primary Health
     Centre,
  Labbaikudikkadu - 621 108
  Perambalur District.

+1cc to Mr.R.Balasubramanian, Advocate Sr. 49769
+1cc to the Government Pleader, Sr. 50168

W.P.No.16859 of 2008

AR(V)
VR(03/08/2017)

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